



BOARD OF BEHAVIORAL SCIENCES
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BOARD MEETING MINUTES
November 16-17, 2006

Handlery Union Square Hotel
351 Geary Street
San Francisco, CA 94102

Thursday, November 16

MEMBERS PRESENT

Victor Law, Chair, Public Member
Gordonna DiGiorgio, Public Member
D'Karla Leach, Public Member
Victor Perez, Public Member
Karen Roye, Public Member
Dr. Ian Russ, MFT Member
Howard Stein, Public Member
Joan Walmsley, LCSW Member

MEMBERS ABSENT

Judy Johnson, LEP Member

STAFF PRESENT

Paul Riches, Executive Officer
Mona Maggio, Assistant Executive Officer
Steve Sodergren, Program Manager
George Ritter, Legal Counsel
Paula Gershon, Budget Analyst
Christy Berger, Legislative Analyst
Justin Sotelo, Regulatory Analyst
Christina Kitamura, Administrative Assistant

GUEST LIST

On File

FULL BOARD OPEN SESSION - Call to Order & Establishment of a Quorum

The meeting was called to order at 9:32 a.m. Christina Kitamura called roll and a quorum was established.

I. Chairperson's Report

Victor Law, Board Chairperson, reported on changes that took place since the last Board meeting. At the July 27, 2006 Board meeting, the Board elected Robert Gerst as Chair and Victor Law as Vice Chair. However, Mr. Gerst was not appointed to a second term on the Board. Therefore, Mr. Law became Chair on August 1, 2006.

Mr. Law introduced and welcomed three new Board members appointed by the Governor: Karen Roye, D'Karla Leach, and Victor Perez. The new Board members introduced themselves and gave their backgrounds.

Karen Roye is from Oakland, California and is currently the Director of Child Support Services for San Francisco County. She has worked in government for approximately 20 years. Prior to that, she worked as a budget analyst for the Mayor of San Francisco's Office of Fiscal and Legislative Affairs, and as a broker and trading officer for Manufacturer's Hanover Trust Company. Ms. Roye is very excited to have this opportunity to work with the Board of Behavioral Sciences.

D'Karla Leach is the Director of Outreach from the University of California, Davis Education Abroad Center. Prior to that, Ms. Leach was a consultant in the public sector. Ms. Leach is looking forward to gaining experience in policy and decision-making, and excited to work with the Board.

Victor Perez has been an attorney for 24 years. He is the sole practitioner with The Perez Law Firm. Mr. Perez has been involved in community activities of the County of Tulare. He currently sits on the Board of Directors of Tulare County Boys and Girls Club and the Visalia Education Foundation. Mr. Perez also sits on the Visalia Planning Commission. Mr. Perez is a strong advocate for oversight and involvement in the community.

II. Executive Officer's Report

A. Personnel Update

Paul Riches reported on staff changes that occurred since the July 2006 Board meeting. Kim Madsen, who served as the Board's program manager, received a promotion at the Board of Barbering and Cosmetology. Tricia Soares, who served as a marriage and family therapist license evaluator, received a promotion at the State Personnel Board. Victoria Gaines, who served as a social work license evaluator, received a promotion at the Board of Barbering and Cosmetology.

Steve Sodergren from the Department of Health Services was hired as the new program manager. Marsha Gove was hired as an Office Technician in the cashiering unit. Lora Romero and Candis Montoya were both were hired as part-time Office Assistants.

Staff is currently recruiting for 3 vacant positions that should be filled by the next Board meeting.

B. Report on MHSA Education and Training Workgroups

Mr. Riches gave an update on the Mental Health Services Act (MHSA) implementation. A draft of the MHSA Workforce Education and Training Five-Year Strategic Plan and a draft of the Statewide Workforce Needs by Occupational Classification and Diversity Challenges were provided.

Mona Maggio is participating in the Needs Assessment group. Mr. Riches is involved in the Licensing and Certification group. The major element in the strategic plan out of this workgroup is to put together a program to fund supervision, as well as to provide funding for qualified supervisors to free up their time to allow more supervision.

C. Examination Update

Mr. Riches reported a major malfunction that occurred with Thompson Prometric. Board members were notified of this matter in September. The clinical vignette examination was expanded to 40 items, and the time allowed to complete the exam was accordingly increased from 90 minutes to two hours. Thompson Prometric erred and allowed only 90 minutes to complete the 40-question exam. Testing was shut down for approximately 10 days so that Thompson Prometric could correct their systems. Approximately 100 candidates were affected, and Thompson Prometric granted them free re-examinations. The Board of Behavioral Sciences

(Board) also granted refunds of the initial examination fee and provided fee waivers towards their initial license fees.

Since that time, testing has been successful in terms of correct administration time. The Board continues to have problems with Thompson Prometric and their test administration, however, not as severe as the recent malfunction.

The department is in a Request For Proposal (RFP) process to put the examination contract out for bid. The bid failed on three past occasions. It recently failed again on the fourth attempt. The department is canceling the last RFP. The process will begin again, and it may take 6-12 months to the end of that process. The current contract with Thompson Prometric has been extended until the bid process is complete and the contract is awarded to a vendor.

Dr. Ian Russ commended Mr. Riches on his quick response and responsible actions towards the affected candidates.

Mr. Riches stated that the Consumer Protection Committee discussed going back and looking at the exam structure, so that if these exam failures happen again, candidates will not be put in adverse situations.

Mr. Law also commended Mr. Riches on his quick and responsible actions towards this dilemma.

Victor Perez stating that this could result in a class action lawsuit. Some candidates may have committed to jobs, and this error may have seriously affected them. The Board needs to have something in place to have a say in the contract process.

Mr. Riches shared Mr. Perez's frustration. These issues were raised with the department. Mr. Riches ensured that he will not let up on the department.

George Ritter, Legal Counsel, stated that the public contracts code is very specific. In order to get that type of consideration in the process, you would have to go through the legislature and that would involve a major undertaking because it would be a universal change.

D. Custody Evaluator Issues

Mr. Riches reported that the Board receives many complaints regarding the custody evaluation process. State law requires that evaluators have a license with the Board of Behavioral Sciences or the Board of Psychology. To understand and educate staff about the evaluation process and to help the courts understand the complaints that the Board receives, staff met with the Administrative Office of the Courts (AOC), which is a state agency that has oversight over the courts in custody evaluations process. Staff identified some issues that we will look at in terms of coordinating our complaint processes along with the local court complaint processes, and how we will handle those complaints.

Dr. Russ explained that when someone has a complaint regarding a custody evaluator, the courts instruct those people to go to the licensing boards. Custody evaluators have quasi-immunity, therefore, cannot be sued civilly. The recourse is lodging a complaint to the courts or to the licensing boards. The AOC stated that it is in the law that the boards oversee the conduct of licensees in the act of custody evaluations. The AOC is going to supply the Board staff with a list of each county and its contact information, so if there is a complaint, the first recourse is at the court level. However, licensing issues will be addressed by the licensing board.

Janlee Wong, Executive Director of NASW California Chapter, stated that there are 58 counties and only one state agency. It is not possible to standardize all 58 counties; however, it is possible to standardize the state agency. Mr. Wong suggested that the Board review the disciplinary

criteria against the details of the custody evaluations so that there is a separation between professional and licensing issues, and custody evaluation issues.

Dr. Russ explained that the custody evaluation decisions belong to the courts. The Board only responds to complaints regarding the licensing issues. It does not have anything to do with the process of the courts. The Board is not dealing with the courts decisions.

Mr. Riches added that the focus is to not put consumers in between the two agencies. First, there needs to be an understanding on both ends.

E. Miscellaneous Matters

Mr. Riches reported that the BBS recognizes and accepts degrees from schools accredited by the Western Association of Schools and Colleges (WASC). For marriage and family therapist (MFT) licensure, the Board also accepts degrees from schools approved by the Bureau for Private Postsecondary and Vocational Education (BPPVE), which is under the Department of Consumer Affairs. The BPPVE grants approvals for both degree-granting and non-degree granting institutions. The Governor vetoed the sunset extension bill for the BPPVE. Effective July 1, 2007, the BPPVE will cease to exist as well as that entire body of law. A significant number of our candidates are coming out of those approved programs. The administration is expected to put out its reform proposal in December.

Dr. Russ asked what happens to those institutions in the interim. Mr. Riches responded that staff is looking into that. Mr. Riches added that other licensing boards are facing this problem. Approximately 24 programs that have qualifying degrees for marriage and family therapy students. The number of students in those programs is not known at this time, but staff is looking into that. According to the exam statistics, about 20%-25% of the candidates for the standard written exam during the last two cycles came out of these approved programs. It implicates student loans and the validity of their degrees. Approvals are granted for a 3-year period, and most of the Board's qualifying degree programs recently renewed. Until more information is available, the Board will continue to recognize those degrees granted from the schools with valid approval.

Mr. Ritter stated that urgency legislation is being considered, but it will take a two-thirds vote.

Mr. Riches stated that this issue would be discussed at the February Board meeting. At that point, if it appears that there will not be a resolution, staff may have a proposal for the Board to seek resolution, but first the legal issues must be sorted out. The goal is to make sure the candidates coming through the process are treated fairly and that the Board has reasonable accommodations to handle them.

Dr. Russ pointed out that schools might suddenly cram coursework before the deadline; the Board must pay attention to those schools meeting the criteria.

Mr. Riches agreed adding that there are potential complicating issues that are going to arise in response to this.

Janlee Wong, NASW, stated that this would be a good opportunity for the Board to look at accreditation and standards. Social work has a national accrediting body. There is a general accreditation in marriage and family therapy, unlike the standardization that social work has with a national accreditation. The Board can require specific accreditation for MFT applicants.

Mary Riemersma, Executive Director of the California Association of Marriage and Family Therapists (CAMFT) explained that the legislature was reluctant to limit or restrict the degrees to a regional accrediting body. The thought was by allowing the bureau to approve degree programs,

this would give opportunities to people who could not otherwise get education that would qualify them to be a marriage and family therapist. The licensing law for MFT is very specific with regard to the educational content, and the law states that the program is to be a fully integrated degree program from beginning to end infused with marriage and family therapy courses that are clearly defined. There is only one national accrediting body, the American Association for Marriage and Family Therapy's (AAMFT) Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE). It is very difficult for California schools to acquire accreditation through COAMFTE. Ms. Riemersma asked if the Board or the BPPVE notified the schools about this so that they can help to solve this dilemma.

Mr. Riches responded that the schools have not received notification yet. Board staff will send notices soon.

III. Approval of July 27, 2006 Board Meeting Minutes

A correction was noted on Page 12 - *Victor Manoleas* was corrected to *Victor Law*. A correction was noted on page 13 - *Mr. Russ* was corrected to *Dr. Russ*.

DR. RUSS MOVED, KAREN ROYE SECONDED, AND THE BOARD CONCURRED TO APPROVE THE JULY 27, 2006 BOARD MEETING MINUTES AS AMENDED.

IV. Election of Vice Chair

Victor Law opened the election of the Board's Vice Chair by accepting nominations. Karen Royce nominated Donna DiGiorgio, and D'Karla Leach seconded. Ms. DiGiorgio declined the nomination.

Ms. DiGiorgio nominated Joan Walmsley. Ms. Walmsley declined the nomination.

MS. WALMSLEY NOMINATED DR. IAN RUSS. DR. RUSS ACCEPTED THE NOMINATION. MS. DIGIORGIO SECONDED, AND THE BOARD VOTED TO ELECT DR. IAN RUSS AS VICE CHAIR OF THE BOARD.

V. Report of the Consumer Protection Committee

Joan Walmsley reported that the Board was invited to the National Association of Social Workers (NASW) Ethics Summit in Washington D.C. The Board was involved because California is the only state that does not participate in the national exam for clinical social workers.

Janlee Wong, Executive Director of NASW CA, explained that the purpose of the summit was to re-examine the code of ethics of professional social workers, to determine if the code needs revision, and how to further ethics education among social workers.

Ms. Walmsley reported that NASW was interested in the California code of ethics, and how the Board utilized it. She explained that NASW has their own code of ethics, however, the Board does not strictly use NASW's ethics.

Mr. Riches explained that the key is establishing a standard of care. Different sources are frequently referred to when establishing standards of care; the chief source is the codes of ethics. But there are places where California law is very specific which overrules the codes of ethics, and that is also incorporated into establishing standards of care.

A. Recommendation 1 – Invite Association of Social Work Boards (ASWB) to Discuss National Exam for Clinical Social Workers

Mona Maggio reported that in February 2006, the Board received a letter from Roger A. Kryzanek, President of the Association of Social Work Boards (ASWB). The purpose of Mr. Kryzanek's letter was to ask the BBS to consider rejoining the ASWB and to require candidates for clinical social work licensure to take ASWB's national examination. Mr. Kryzanek offered to come and address the BBS and share the changes in its examination.

The Board was a member of ASWB from October 1991 through March 1999. But there were some concerns regarding examination development and administration. The Department's Office of Examination Resources (OER) conducted an analysis of the national exam. The examination was not meeting the needs of California, it did not address the demographics of California, and there was a concern regarding the pass rate for California's first-time examination participants. The Board determined that there was a need for a state-constructed written examination.

Mr. Kryzanek is interested in giving a presentation on the national examination. The Consumer Protection Committee reviewed his letter and the information he provided, and is recommending to the Board to have Mr. Kryzanek give a presentation at the February 2007 Board meeting.

VICTOR LAW MOVED, DR. IAN RUSS SECONDED TO HAVE MR. KRYZANEK GIVE A PRESENTATION ON THE NATIONAL EXAMINATION TO THE BOARD AT THE FEBRUARY 2007 BOARD MEETING. ONE MEMBER OPPOSED THIS MOTION AND 7 MEMBERS WERE IN FAVOR.

B. Recommendation 2 – Propose to Amend Title 16, California Code of Regulations Sections 1887(a), 1887(b), 1887.2(a), and 1887.3(a) Regarding Continuing Education Course Requirements

Ms. Maggio explained that licensees are currently permitted to take an unlimited amount of continuing education (CE) by conventional or online means; however, hours earned through self-study courses are limited to one-third of the total required CE hours. The Committee decided that there was no reason to limit the amount of CE obtained by any one method. Licensee should be able to obtain CE credits by any means that suits them.

The Consumer Protection Committee is proposing to the Board to delete limitations regarding hours of self-study, and to add a better definition of continuing education.

Dr. Russ explained that this goes against another item on the agenda regarding establishing a standard to measure quality of continuing education providers being held to a standard of excellence. This proposal would conflict in establishing a standard of excellence.

Ms. Walmsley asked if the hours could be modified. Mr. Riches responded that the hours could be modified. Several years ago, the Board made the decision to allow all 36 hours to be obtained through online courses because the Board wanted everyone to have the opportunity to acquire CE regardless of their life circumstances or where they live.

Mary Riemersma, CAMFT, stated that many licensees do not enjoy a workshop mode of learning or they have issues that make it difficult to attend that workshop. Some people work better with self-study projects. There needs to be an equal opportunity for people trying to acquire continuing education. It is not fair to assume that someone attending a workshop is going to benefit more. Self-study is not negligent or inferior. There are different needs out there, and the law needs to be structured to accommodate those different needs.

Geri Esposito, Executive Director of the California Society for Clinical Social Work (CSCSW), stated that there are people who are less computer literate and more comfortable reading, and people with certain mobility impairments and visual impairments, who might adapt in different ways to self-study as opposed to the Internet. Continuing education credits need to be accessible to these people.

Victor Perez stated that there is a great deal of manipulation of the self-study process and opposed allowing all hours of continuing education for self-study.

VICTOR LAW MOTIONED, KAREN ROYE SECONDED, AND THE BOARD CONCURRED TO MODIFY HOURS OF SELF-STUDY CONTINUING EDUCATION TO 18 HOURS.

C. Recommendation 3 – Sponsor Legislation to Add Violations of the Health and Safety Code Regarding Patient Records and Violations of the Telemedicine Statute to the Definition of Unprofessional Conduct

Ms. Walmsley presented a recommendation to sponsor legislation to amend unprofessional conduct statutes for marriage and family therapists (MFT), clinical social workers (LCSW) and licensed educational psychologists (LEP).

Ms. Maggio provided the background behind the proposal regarding the Health and Safety Code relating to patient records. The Consumer Protection Committee reviewed the Board's unprofessional conduct statutes. The Committee was informed that the Board receives numerous complaints regarding licensees who decline to provide client records pursuant to Health and Safety Code (HSC) Section 123110. Although the Enforcement Analysts attempt to assist clients, there is no recourse for noncompliance because the Board does not have a provision in law that requires licensees to provide the records.

A proposal was brought before the Board at its May 2006 meeting that would have added a violation of HSC Section 123110 to the definition of unprofessional conduct. At this meeting, the suggestion was made to instead reference the full chapter of the HSC that pertains to the release of patient records, as there are other applicable sections. The revised proposal was brought back to the Consumer Protection Committee at its September 2006 meeting. A suggestion was made by Mary Riemersma of CAMFT to modify the language to indicate a "willful violation" as opposed to simply a "failure to comply."

Ms. Maggio provided background behind the proposal regarding telemedicine. In 1996, California passed legislation pertaining to the practice of telemedicine (Business and Professions Code [BPC] Section 2290.5). In 1999, the statute was amended to require MFTs and LCSWs to comply with this statute. The Board has been treating BPC Section 2290.5 as part of its law even though it is part of the Medical Practice Act. However, it would be difficult for the Board to take enforcement action under a provision that is not directly a part of the Board's law.

Ms. Maggio provided background behind the proposal regarding regulations versus statute. Staff reviewed the regulations pertaining to unprofessional conduct and noted that the regulations duplicate the statute, with a couple of exceptions. The failure to report abuse of a child, elder, or dependent adult are in MFT and LCSW regulations, but are not in statute. To have a consistent, cohesive unprofessional conduct law, it is preferable to list all instances of potential unprofessional conduct in one place.

After some discussion, a motion was made to approve the recommendations.

DR. IAN RUSS MOVED, GORDONNA DIGIORGIO SECONDED, AND ALL CONCURRED TO APPROVE THE RECOMMENDATION TO SPONSOR LEGISLATION TO ADD VIOLATIONS OF THE HEALTH AND SAFETY CODE REGARDING PATIENT RECORDS AND VIOLATIONS OF THE TELEMEDICINE STATUTE TO THE DEFINITION OF UNPROFESSIONAL CONDUCT.

D. Presentation by Bobby Pena and Phil Perry on Communications Contract

Bobby Pena and Jairo Moncada from BPCubed gave a presentation of the communication plan. Mr. Pena briefly described the process in developing a communications plan. The process is to establish short-term and long-term goals, identify the audiences, and determine the message to each of the audiences. Mr. Pena also explained the effort to move the current image of a state regulatory agency to an image that suggests a more humanistic approach. The proposed logo is one that suggests a strong connectivity: connecting the Board to the primary audiences and connecting the audiences with each other, as well, to the purpose of ensuring competence in high standards and access to the mental health professions.

Dr. Russ explained that the Board is dedicated to stimulate interest in various cultures and to protection, and would like to see these incorporated into the communication plan.

Ms. Walmsley recommended a change to the communication plan language, replacing the term *Patient* with the term *Client*.

There was some discussion regarding recruitment of licensees as Subject Matter Experts and other services. George Ritter commented that recruiting is not within the statutory authority of the Board

The Board adjourned for lunch at 12:14 p.m.

E. Review and Adoption of Board Logo Design

The Board reconvened at 1:27 p.m.

Ms. Maggio reported on the development of a logo for the Board that would help consumers and stakeholders to identify the Board. Samples of logos were provided for review.

BPCubed presenters discussed how they came up with the logo designs and colors, and what the design and colors represent. The message intended by the design is “connection.”

Ms. DiGiorgio suggested building on the first logo, PMS 498.

Ms. Walmsley suggested a more distinguishable design to be used as the logo.

After review and short discussion, Mr. Law suggested that BPCubed return to the drawing board.

F. Strategic Plan Update

Ms. Maggio reported on Objective 3.1: Complete Revisions for Continuing Education Laws by December 31, 2006.

Title 16, California Code of Regulations (CCR), Sections 1816.7 and 1887.7, Delinquency Fees for Continuing Education Providers

This proposal would allow a registered provider of continuing education (PCE) a period of one year from the registration's expiration date in order to renew an expired PCE registration with a \$100 delinquency fee. Currently, when a PCE does not renew the registration prior to its expiration date, the registration is cancelled and a new registration must be obtained. The Budget and Efficiency Committee recommended granting a \$100 delinquency fee for CE Providers.

Title 16, CCR, Sections 1887(b), 1887.2(a), and 1887.3(a) Continuing Education

This item was discussed under agenda item V.B.

Title 16, CCR, Section 1886, Citation and Fine of Continuing Education Providers

This proposal would provide the Board with the authority to issue a citation and fine to a continuing education provider. This proposal is currently on hold due to staff workload considerations.

Ms. Maggio reported that there was nothing new to report on Objective 3.2: Establish a Standard to Measure Quality of Continuing Education by June 30, 2007.

Ms. Maggio reported on Objective 3.3: Complete 12 Substantive Changes in Law and Regulations by January 1, 2008. The Board sponsored Senate Bill 1475, which updates the Licensed Educational Psychologist statutes. This bill has been signed by the Governor, and takes effect January 1, 2007.

The Board sponsored Assembly Bill 1852, Licensed Mental Health Service Provider Education Program. This bill allows marriage and family therapist interns and associate clinical social workers to be eligible to apply for educational loan repayment under the Licensed Mental Health Service Provider Education Program (Program). The bill also provides technical cleanup of the Program's statute. This bill takes effect on January 1, 2007; however, loan reimbursement will not be available until the Health Professions Education Foundation implements regulations. There have been difficulties keeping a director in place; therefore, efforts to move ahead were suspended. Mr. Riches, Ms. Maggio, and Ms. Berger recently met with the interim director who is anxious to proceed with development of the regulations.

Ms. Maggio reported on Objective 3.4: Advocate for Five Laws that Protect the Privacy of Client/Therapist Relationships by December 31, 2010. The Board took a position of support on Assembly Bill 3013. This bill strengthens patient confidentiality laws by conforming California law to provisions of the Health Insurance Portability and Accountability Act (HIPAA) which limit the release of patient information, provide the patient the opportunity to prohibit such a release, and permit the health care provider to make judgments regarding releases in emergency situations. This bill takes effect January 1, 2007.

Ms. Maggio reported on Objective 3.6: Reduce time in which BBS cases are investigated and processed by DOI and AG by 30% by June 30, 2010. The Board has been having problems with the Division of Investigation (DOI) in handling complaints timely due to staff shortages. In September 2006, Ms. Maggio met with Kathy Door, Chief, and Bill Holland, Deputy Chief of the DOI. Ms. Door and Mr. Holland are both leaving the DOI. Currently, two senior investigators will serve in the administrative roles in the interim until a new chief and deputy chief are hired.

The DOI created Request for Service Guidelines in order to help serve its clients better and help prioritize complaints. The guidelines provided a list of recommended duties for staff to assume. However, the Board's enforcement unit already performs many of the tasks that the DOI is recommending. The Board is moving in the direction of performing many of the investigative duties in-house.

G. Enforcement Statistics

Mr. Riches reported very briefly on the enforcement statistics stating that the pattern is very consistent with the complaint volume and case resolution from last year.

VI. Presentation on Board Budget

Paula Gershon, Budget Analyst, gave a presentation on understanding the Board's budget and how it is constructed.

VII. PUBLIC HEARINGS ON PROPOSED AMENDMENTS TO REGULATIONS

PUBLIC HEARING WAS OPENED AT 2:20 P.M.

On Thursday November 16, 2006 at 2:20 p.m. in San Francisco, California, Mr. Law gave an introduction explaining the Board's intent to conduct a public hearing of proposed regulations. The regulation proposals were filed with the Office of Administrative Law and have been duly noticed; and copies of the proposed regulations have been sent to interested parties.

Notice #1 (Supervisor Qualifications/Requirements):

The regulation proposal would amend Division 18 of Title 16, California Code of Regulations Sections 1833.1 and 1870. The Board currently interprets supervision of an MFT intern, MFT Trainee, or ASW to be "psychotherapy" for the purposes of meeting the practice requirements in Sections 1833.1 and 1870. This proposal would make this interpretation explicit in the regulations. It would also delete the requirement that supervisors of MFT Interns or Trainees average five patient/client contact hours per week. Mr. Law opened the floor for anyone wishing to testify.

Benjamin Caldwell, AAMFT California, referred to the terms "counseling" and "therapy" and suggested consistency in proposed language by using one term. Mr. Caldwell questioned the rationale of the omission of the last sentence in paragraph (10)(b) under 1833.1.

Christy Berger responded that this paragraph states that an intern or trainee must submit a Responsibility Statement upon application for internship; however, current practice is that it is collected upon application for licensure.

Nobody else testified and the item was closed.

Notice #2 (Continuing Education Providers):

The regulation proposal would amend Division 18 of Title 16, California Code of Regulations (CCR) Section 1816.7 to add a delinquency fee for continuing education provider approval.

The regulation proposal would amend Division 18 of Title 16, (CCR) Section 1887.7 to delete the provision requiring a provider to apply for a new approval after the expiration date. In addition, the proposal would add that the provider may not apply for a new provider approval number within one year of an existing approval's expiration unless the provider has undergone a change of ownership. This proposal would also add that when a provider's approval is expired, no course may be presented for continuing education credits for licensees of the Board.

The regulation proposal would adopt Division 18 of Title 16, (CCR) Section 1887.75 to set forth requirements for renewal of an expired approval.

The regulation proposal would adopt Division 18 of Title 16, (CCR) Section 1887.77 to set forth a one-year time limit for renewal of an expired approval. Beyond one year from a provider's approval expiration, that provider would be required to apply for a new approval with the Board.

Mr. Law opened the floor for anyone wishing to testify. Nobody testified and the item was closed.

Notice #3 (Abandonment of Application Files, Fees, and Technical Clean Up):

The regulation proposal would:

- Amend Division 18 of Title 16, CCR Section 1805 to establish a 180-day waiting period between examinations for any applicant retaking an examination in order to ensure that the applicant take a different version of the examination.

- Amend Division 18 of Title 16, CCR Section 1806 and to repeal Section 1833.3 to resolve the discrepancy between these two regulations, providing all candidates with a one-year period in which to take an examination to avoid abandonment of their application.
- Amend Division 18 of Title 16, CCR Sections 1816, 1816.1, 1816.2, 1816.4, and 1816. to set forth non-substantive changes that would restructure the regulations or make text revisions in order to: provide clarity; improve structure and order; provide consistency across the practice acts; and remove duplicative, outdated, or unnecessary language. The proposed changes under these regulations would be more user-friendly for staff, applicants, licensees, and registrants.
- Amend Division 18 of Title 16, CCR Section 1854 to set forth degrees deemed equivalent to those specified in Section 4986.20(a) of the Business and Professions Code (BCP).
- Repeal Division 18 of Title 16, CCR Section 1855 regarding outdated grandparenting provisions.
- Amend Division 18 of Title 16, CCR Section 1856 to delete outdated grandparenting provisions under subdivision (d).
- Repeal Division 18 of Title 16, CCR Section 1857 regarding outdated grandparenting provisions.
- Amend Division 18 of Title 16, CCR Section 1858 to delete provisions that would instead fall under BPC 4989.54 (SB 1475).

Mr. Law opened the floor for anyone wishing to testify. Nobody testified and the item was closed.

PUBLIC HEARING WAS CLOSED AT 2:27 P.M.

VIII. Review and Possible Action on Proposed Amendments to 16CCR1803 Regarding Delegation to the Executive Officer

Christy Berger presented the proposed amendments, which have been approved by the Board and noticed. Ms. Berger explained that a case called into question the means by which an order to compel a psychiatric evaluation can be issued. Past practice at the BBS and other licensing boards was to have the order signed by the board chair. It was determined that such an order is an investigatory function and should not be performed by board members who serve as judges in the administrative adjudication process. Due process requires that the investigatory function and the adjudication function be separate and performed by different parties. Subsequent to this determination, the board chair signed a general delegation to the executive officer to sign orders to compel a psychiatric evaluation. The delegation should be formalized by adding it to Section 1803, and should include a mental or physical evaluation.

The Board was asked consider and approve the recommendations.

JOAN WALMSLEY MOVED, GORDONNA DIGIORGIO SECONDED, AND THE BOARD CONCURRED TO APPROVE THE RULEMAKING RECORD, TO APPROVE AND ADOPT THE MODIFIED TEXT FOR SECTION 1803 AS ITS FINAL LANGUAGE; AND TO DIRECT STAFF TO FILE THE RULEMAKING RECORD WITH THE OFFICE OF ADMINISTRATIVE LAW.

IX. Review and Possible Action on Proposed Amendments to 16CCR1833.1 & 1870 Regarding Supervisor Qualifications

The intent of the proposal was stated during the public hearing under agenda item VII, Notice #1. Justin Sotelo reported that the proposed changes in the regulations were noticed and comments regarding the proposed changes were received.

The Board was asked to consider and approved the recommendations.

DR. IAN RUSS MOVED, KAREN ROYE SECONDED, AND THE BOARD CONCURRED TO APPROVE THE PROPOSED CHANGES, MAKE PROPOSED CHANGES AVAILABLE TO THE PUBLIC WITH A 15-DAY COMMENT PERIOD, AND BRING BACK TO THE BOARD FOR FINAL ADOPTION.

X. Review and Possible Action on Proposed Amendments to 16CCR1816.7, 1887.7, 1887.75, & 1887.77 Regarding Continuing Education Providers

The intent of the proposal was stated during the public hearing under agenda item VII, Notice #2. Justin Sotelo reported that the proposed changes in the regulations were noticed and comments regarding the proposed changes were received.

The Board was asked to consider and approve the recommendations.

DR. IAN RUSS MOVED, D'KARLA LEACH SECONDED, AND THE BOARD CONCURRED TO APPROVE THE PROPOSED CHANGES, MAKE PROPOSED CHANGES AVAILABLE TO THE PUBLIC WITH A 15-DAY COMMENT PERIOD, AND BRING BACK TO THE BOARD FOR FINAL ADOPTION.

XI. Review and Possible Action on Proposed Amendments to 16CCR1805, 1806, 1833.3, 1816, 1816.1, 1816.2, 1816.4, 1816.6, 1854, 1855, 1856, 1857, & 1858 Regarding Application Files, Fees and Licensed Educational Psychologists

The intent of the proposal was stated during the public hearing under agenda item VII, Notice #3. Justin Sotelo reported that the proposed changes in the regulations were noticed and comments regarding the proposed changes were received.

The Board was asked to consider and approve the recommendations.

DR. IAN RUSS MOVED, D'KARLA LEACH SECONDED, AND THE BOARD CONCURRED TO APPROVE THE PROPOSED CHANGES, MAKE PROPOSED CHANGES AVAILABLE TO THE PUBLIC WITH A 15-DAY COMMENT PERIOD, AND BRING BACK TO THE BOARD FOR FINAL ADOPTION.

XII. Report of the Policy and Advocacy Committee

A. Recommendation #1 – Revisions to Section 4980.90 Relating to Out-of-State Applicants for MFT Licensure

Gordonna DiGiorgio reported that the Board is required to accept education gained toward becoming a MFT obtained outside of California when it is found to be substantially equivalent to education obtained in California (BPC Section 4980.90).

Mr. Riches added that BPC Section 4980.90 is unclear regarding persons who live in California while attending a school located outside of California, such as an online school. Such persons are currently subject to the same educational requirements as those who both live and attend school outside of California, meaning the degree must be “substantially equivalent.” However, a person who resided in and attended a school located in California must meet more stringent requirements.

The Board was asked to seek legislation to implement the proposed language revising BPC Section 4980.90.

GORDONNA DIGIORGIO MOVED, VICTOR PEREZ SECONDED, AND THE BOARD CONCURRED TO APPROVE THE RECOMMENDATION TO SEEK LEGISLATION TO IMPLEMENT THE PROPOSED LANGUAGE REVISING BPC SECTION 4980.90.

B. Recommendation #2 – Reduce License Delinquency Period to Three Years

Ms. DiGiorgio reported that LCSWs, LEPs, and MFTs are required to renew their licenses every two years. A license is “cancelled” when it is not renewed within five years from the expiration date. The discussion was allowing a license to become cancelled is a five-year process. It is the only way for a person to give up their license other than a voluntary surrender. There are some consumer protection concerns when a person is permitted to obtain a new license after a five-year period of non-practice. Staff initially proposed a two-year delinquency period as a more reasonable time frame for a license to be cancelled by the Board. At the September 2006 meeting of the Policy and Advocacy Committee, stakeholders strongly preferred a three-year period.

The Board was asked to seek legislation to implement the proposed language, which would reduce the license cancellation time frame from five years to three years.

KAREN ROYE MOVED, GORDONNA DIGIORGIO SECONDED, AND THE BOARD CONCURRED TO APPROVE THE RECOMMENDATION TO SEEK LEGISLATION TO IMPLEMENT THE PROPOSED LANGUAGE REDUCING THE LICENSE CANCELLATION TIME FRAME.

C. Recommendation #3 – Eliminate Extensions for Associate Clinical Social Worker Registrations

Mr. Riches reported that an Associate Clinical Social Worker (ASW) is currently permitted to retain the ASW registration for a maximum of six years. If needed, an ASW may apply for a maximum of three one-year extensions of the registration beyond this six-year period. In the past, Marriage and Family Therapist Interns (Intern) were also permitted three one-year extensions. Effective January 1, 1999, the extension provision for Interns was deleted. Though ASWs and Interns have different content standards for registration and experience, parallel business processes are needed in order to provide administrative simplicity. Such differences can also be confusing for supervisors and registrants.

The Board was asked to sponsor legislation to eliminate the ASW extension process.

DR. IAN RUSS MOVED, D’KARLA LEACH SECONDED, AND THE BOARD CONCURRED TO APPROVE RECOMMENDATION TO SPONSOR LEGISLATION ELIMINATING THE ASW EXTENSION PROCESS.

D. Regulation Update

Ms. DiGiorgio reported that all of the regulatory changes in this update were discussed/reviewed under agenda items VII through XI.

E. Legislation Update

SB 1475 and AB 1852 were discussed under agenda item V.F.

Ms. DiGiorgio provided an update on AB 525 (Chu) Child Abuse Reporting. The Board voted to support this bill, which becomes effective on January 1, 2007.

Ms. DiGiorgio provided an update on AB 2283 (Oropeza) Physicians and Surgeons: Cultural Background and foreign Language Proficiency. The Board voted to support this bill, which takes effect in 2007.

Other legislation that supported by the Board that takes effect in 2007 were available in the Board meeting packet.

F. Strategic Plan Update

Mr. Riches stated that the committees would revisit strategic plans beginning in January 2007. The Board will be asked to review the existing objectives and goals under the strategic plan, and offer revisions at its February 2007 meeting. Goal 5 (utilize technology to improve and expand services) will require revisiting because Objective 5.3 is in regards to accepting new applications online, which is not within the scope of the iLicensing system

Mr. Riches reported on Goal 6: Maximize the efficiency and effectiveness of the Board's resources. The productivity targets in each of these objects were established by projecting future workload based on an evaluation of the trends established in the past five years. These productivity increases are required if the new workload is to be absorbed without either an increase in staffing or reduction in service levels.

Mr. Riches reported on Objective 6.2: Increasing enforcement staff productivity in processing consumer complaints 29% by June 30, 2010. Measuring productivity in enforcement poses a significantly greater challenge than in other board programs. This objective specifically references consumer complaints, and therefore, actions taken based on internal investigations or criminal convictions information were not considered. Both of these categories do include a significant portion of the enforcement unit workload, but the objective sought to focus on consumer complaints as the most important element of that workload. Mr. Riches explained how staff came up with a method of measuring productivity through a value, or point, scale.

G. Budget Update

This item was discussed/reviewed under agenda item VI.

H. Quarterly Licensing Statistics

Mr. Riches reported that the licensing application processing times have improved from 23 days of deficiency to 8-9 days of deficiency. When a deficiency is encountered, it doubles or triples the amount of time it takes to process an application. Staff has been working to improve the communication between staff and the applicants to reduce deficiencies.

Ms. Berger stated that prior to the close of the meeting, the Board needed to address the proposed language for agenda item V.B. (Recommendation 2 – Propose to Amend Title 16, California Code of Regulations Sections 1887(a), 1887(b), 1887.2(a) and 1887.3(a) Regarding Continuing Education Course Requirements). Mr. Ritter explained that the initially proposed language had deleted the definition of self-study, as there would have no longer been a distinction between self-study and other types of CE. Since the Board decided to keep a limitation regarding self-study

hours, the definition needs to be retained in Section 1887(b). Additionally, Sections 1887.2 and 1887.3 need to retain language specific to self-study.

Mr. Law asked for public comments. No comments were received.

The Board was asked to approve this amendment.

DR. IAN RUSS MOVED, KAREN ROYE SECONDED, AND THE BOARD CONCURRED TO APPROVE THE LANGUAGE AS AMENDED.

XIII. Public Comment for Items Not on the Agenda

Mary Riemersma, CAMFT, thanked the Board and staff for granting the accommodations to those who were disadvantaged by the exams. Ms. Riemersma stated that she received unconfirmed information that when the Board is approving or auditing continuing education, and reviewing coursework to satisfy the law and ethics requirement, that the Board has come to the conclusion that there must be “law and ethics” specifically in the title, and disallowing the course if it does not have “law and ethics” in the title. Ms. Riemersma recommended that if the Board is pursuing that, to put it into regulation. With regard to applications, Ms. Riemersma asked the Board to reconsider gathering some information from the applicants that may no longer be requested, such as W-2 forms or the agreements that exist between the school, the employer, the supervisor, and the supervisee. A trainee can only earn hours of experience if that agreement is in place. Ms. Riemersma asked the Board to reconsider collecting evidence that one has actually been an employee. Failure to collect some documentation to these effects allows for the potential for abuses. Ms. Riemersma requested that future closed sessions be scheduled for the latter part of the day.

Janlee Wong, NASW, also thanked the Board and staff for granting the accommodations to those who were disadvantaged by the exams.

Meeting adjourned at 3:18 p.m.

Friday, November 17

MEMBERS PRESENT

Victor Law, Chair, Public Member
Gordonna DiGiorgio, Public Member
Victor Perez, Public Member
Karen Roye, Public Member
Dr. Ian Russ, MFT Member
Howard Stein, Public Member
Joan Walmsley, LCSW Member

MEMBERS ABSENT

Judy Johnson, LEP Member
D'Karla Leach, Public Member

STAFF PRESENT

Paul Riches, Executive Officer
Mona Maggio, Assistant Executive Officer
Steve Sodergren, Program Manager
George Ritter, Legal Counsel
Christy Berger, Legislative Analyst
Justin Sotelo, Regulatory Analyst
Christina Kitamura, Administrative Assistant

GUEST LIST

On File

FULL BOARD OPEN SESSION - Call to Order & Establishment of a Quorum

The meeting was called to order at 9:03 am. Christina Kitamura called roll and a quorum was established.

FULL BOARD CLOSED SESSION

XIV. Pursuant to Section 11126(a) of the Government Code to Evaluate the Performance of the Board's Executive Officer.

FULL BOARD OPEN SESSION

The Board recognized Paul Riches for his leadership, performance, and for the relationship he has formed with the Board.

XV. Report of the MFT Education Committee

Dr. Ian Russ reported that the Committee held two meetings. The Committee is responsible for reviewing and updating the MFT curriculum. The next meeting is on December 8, 2006 and will be held alongside the Los Angeles consortium. By the end of next year, a formal proposal of changes will be recommended. Many schools and consumers in mental health are participating. Dr. Russ, Mr. Riches, and Karen Pines are setting up meetings with consumers in Los Angeles to discuss experiences with counseling.

XVI. Presentation Regarding Title Protection for Mental Health Professionals and Certified Alcohol and Drug Abuse Counselors Specialized in Dual Diagnosis Care.

Kathryn Jett, Director of the Department of Alcohol and Drug Programs (DADP), gave a presentation regarding title protection for mental health professionals and certified alcohol and drug abuse counselors specialized in dual diagnosis care.

In 2003, a bill was presented to Governor Schwarzenegger for his signature. The bill came to DADP very late because it fell in the family code section of the law. The DADP picked it up because there was a provision in the law that was inconsistent with federal law in substance abuse. It was too late to change the position on the bill, which was a support. However, there were conflicts in the law with existing statutes. Ms. Jett read from a message from the Governor, which stated that there were certain provisions of the bill that conflicted with existing statutes. He instructed the DADP to resolve this issue through legislation or discussion with other agencies, including the BBS. The Governor also encouraged the BBS and other agencies to increase the education and training for all professionals providing counseling to individuals with alcohol and drug problems.

Addictions in California are growing. All addiction areas are falling under DADP. For the past 6 years, Ms. Jett worked to deal with individuals with co-occurring disorders. What DADP is proposing to the Board will change the need for having two different systems trying to work with one individual, and that is to provide a specialty and training for LCSWs and MFTs as well as recognize a specialty for an addiction counselor.

This law states that MFTs, LCSWs, and ASWs can oversee interns who are dealing with substance abuse in youth. The other part of that provision states that the counselor can converse with the parent of the child, which is in conflict with federal regulations. If counselors are not trained in the ethics and laws, they are liable to lose their license and suffer a steep federal penalty. These laws are very vigorous. A few things in the bill caught attention of DADP staff, and they decided that it is time to bring this to the BBS. The Governor agreed and instructed DADP to work with BBS.

A lot of this training is involved around trauma and abuse. Trauma is one of the chief co-occurring disorders. There is a divide between mental health treatment and drug abuse treatment among practitioners in both areas, and that divide needs to be bridged. If this certification is put into law, DADP would like the BBS, and other agencies, to be co-sponsors of this bill.

XVII. Discussion and Possible Action Regarding Proposal to Establish Title Protection for Mental Health Professionals and Certified Alcohol and Drug Abuse Counselors Specialized in Dual Diagnosis Care.

Dr. Russ asked if this would empower a non-licensed person to start practicing psychotherapy. Ms. Jett responded that this does not empower a non-licensed person to start practicing psychotherapy.

Ms. Walmsley asked for clarification regarding the certification and practice, and if those counselors can practice independently. Ms. Jett clarified that this is not a certificate to practice independently, Ms. Jett explained that the counselor must have their California Association of Alcoholism and Drug Abuse Counselors (CAADAC) certification and have either their MFC or LCSW license just to start.

Peter Manoleas, UC Berkeley, has been a part of this process. Mr. Manoleas gave some history and stated that in the past, some senators carried bills to license addiction counselors. The BBS did not support those bills because there was no scope of practice for such counselors. Public protection is best served by using a variety of marketing and enforcement. The certification process does not have enforcement. The certifying bodies have complaint processes. CAADAC has one board member to follow up on complaints; they have no staff and no authority for enforcement. In order to involve some enforcement on scope of practice issues on non-licensed practice of MFT and LCSW, the BBS needs to be involved. Mr. Manoleas expressed that the certification title needs to be changed.

Dr. Russ stated that the Board would enforce the use of the title. Dr. Russ asked if this is going to require more staff and if this is a process of increasing the budget. Mr. Riches responded yes to both questions.

Mary Riemersma, CAMFT, has procedural concerns. These types of issues are usually brought to stakeholders and the Board together in a workshop format gathering to evaluate the issues and come to a conclusion. It seems as if everything has already been decided. The Board regulates and enforces the MFT and LCSW scope of practice, regardless of their area of specialization is, the Board already has full authority over MFTs and LCSWs. If this is an educational issue, the Board needs to look at the educational requirements for the profession to make sure that if dual diagnosis training is needed, that the required coursework in alcohol and drug has dual diagnosis and that it is adequately taught to MFTs and LCSWs.

Geri Esposito, California Society for Clinical Social Work (CSCSW), urged the Board to slow this process down and take a closer look at it, and solicit and get more input from the fields.

Warren Hayes, Department of Mental Health, supports Ms. Jett's proposal and bridging the two systems. Stakeholder participation is critical. The agencies need to move forward on this.

Mr. Riches stated that the Board can join in this process and bring stakeholders together to discuss this, and come back to the February meeting after going through that process and evaluate the information.

Mr. Law stated that it is a good idea to come together and involve stakeholders, and bring back information to the February Board meeting.

The matter was closed for further discussion.

May 2007 Board Meeting Date

The May 2007 Board meeting date was discussed and rescheduled to May 24th and 25th.

Meeting adjourned at 11:02 a.m.